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10 UNITED STATES DISTRICT COURT

11 DISTRICT OF NEVADA

12 OSMOSIS LLC, a Colorado Limited Liability  
Company

13 Plaintiff,

14 vs.

15 BIOREGENERATIVE SCIENCES, INC., a  
Nevada Corporation; and NEOGENESIS,  
16 INC., a Nevada Corporation.

17 Defendants.

CASE NO.: 2:17-cv-02430-JAD-CWH

**STIPULATION AND PROPOSED ORDER  
TO EXTEND DISCOVERY DEADLINES**

**(Second Request)**

18  
19 IT IS HEREBY STIPULATED BY AND BETWEEN Plaintiff Osmosis, LLC  
20 (“Plaintiff”), by and through its attorneys Eric Olsen, Esq. and Dylan T. Ciciliano, Esq. of Garman  
21 Turner Gordon LLP, and Defendants BioRegenerative Sciences, Inc. and NeoGenesis, Inc.  
22 (collectively “Defendants”) by and through their attorneys of record, Kurt R. Bonds, Esq. and  
23 Adam R. Knecht, Esq. of Alverson, Taylor, Mortenson & Sanders, that the Parties do hereby  
24 stipulate and agree that the current discovery cutoff date of September 3, 2018 be continued for a  
25 period of ninety (90) days up and including December 2, 2018 as follows:

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1 **A. DISCOVERY COMPLETED:**

2 **1. Initial Disclosures:**

3 Defendants served their initial disclosures on Plaintiff on December 14, 2017; bates nos.  
4 BIO0001-0014.

5 Defendants served their First Supplement to Initial Disclosures on February 12, 2018, bates  
6 nos. BIO0015-0094.

7 Plaintiff served its initial disclosures on Defendants on March 14, 2018; bates nos.  
8 Osmosis00000001-00007516.

9 Defendants served their Second Supplement to Initial Disclosures on July 26, 2018; bates  
10 nos. BIO0095-0341.

11 Defendants served their Third Supplement to Initial Disclosures on August 13, 2018; bates  
12 nos. BIO0342-3264.

13 Defendants served their Fourth Supplement to Initial Disclosures on August 17, 2018; bates  
14 nos. BIO3265-3649.

15 **2. Written Discovery by Plaintiff:**

16 On April 19, 2018, Plaintiff served its Requests for Interrogatories, its Requests for  
17 Production of Documents, and Requests for Admissions.

- 18 • Defendants served their answers to Plaintiff's Requests for Interrogatories, its  
19 Requests for Production of Documents, and Requests for Admissions on May 21,  
20 2018.
- 21 • On July 3, 2018, Plaintiff filed their Motion to Compel Discovery Responses and  
22 Request for Fees and Costs Under FRCP 37 [ECF No. 24]
  - 23 ○ The Court granted the First Stipulation for Extension of Time for Discovery  
24 on July 11, 2018.
  - 25 ○ On July 13, 2018 the Court denied the motion to compel without prejudice  
26 and directed Plaintiff to have a more robust meet and confer. [ECF No. 26]
- 27 • On July 26, 2018, the Court entered the Stipulated Protective Order. [ECF No. 28].

- 1           •       On August 13, 2018 Defendants supplemented their initial disclosures, producing  
2                   3,200 pages of documents, and on August 17, 2018, Defendants supplemented their  
3                   answers to Plaintiff's Requests for Interrogatories, its Requests for Production of  
4                   Documents, and Requests for Admissions.

5           **3. Written Discovery by Defendants:**

6           On April 27, 2018, Defendants served their Requests for Interrogatories, its Requests for  
7   Production of Documents, and Requests for Admissions

- 8           •       Plaintiff served its answers to Defendants' Requests for Interrogatories, its  
9                   Requests for Production of Documents, and Requests for Admissions on May 25,  
10                  2018.

11          **4. Depositions**

12          Plaintiff has noticed and continued the depositions of Steven McGee, Gregory Maguire,  
13   the 30(b)(6) representative for Defendant Neogenesis, Inc., and the 30(b)(6) representative of  
14   Defendant BioRegenerative Sciences, Inc. The depositions were continued because of a discovery  
15   dispute that precluded Defendants' production of documents, as set forth in more detail above.

16          Defendants have noticed and continued the deposition of Susan Raffy.

17          **B.     STATEMENT SPECIFYING THE DISCOVERY THAT REMAINS TO BE**  
18   **COMPLETED.**

19          Steven McGee, CEO for Defendant Neogenesis, Inc.

20          Gregory Maguire, CEO for Defendant BioRegenerative Sciences, Inc.

21          30(b)(6) designee for Neogenesis, Inc.

22          30(b)(6) designee for BioRegenerative Sciences, Inc.

23          Dr. Ben Johnson, CEO for Plaintiff Osmosis, LLC.

24          Aaron Burke, Vice President for Osmosis, LLC.

25          30(b)(6) designee for Osmosis, LLC.

26          Susan Raffy, Owner, Susan Raffy Consultants.

27          Additional discovery based upon information discovered in deposition may be necessary.

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Defendants have previously filed a motion to amend their answer to add counterclaims against Plaintiff. Currently, the motion is pending for the Court. Defendants anticipate if the motion is granted that additional discovery with respect to Defendants' counterclaims will be required. Additionally, the parties intend to supplement their initial disclosures and written discovery. Moreover, both parties also anticipate conducting party, percipient witness, and expert witness depositions, including the possible depositions of third-party witnesses who are not under the control of any of the parties in this litigation. The anticipated depositions have not been completed. Further, one of the witnesses is located in California, which requires additional coordination.

**C. THE REASONS WHY DISCOVERY WAS NOT COMPLETED WITHIN THE TIME LIMITS SET BY THE DISCOVERY PLAN.**

The discovery delay was predominantly caused by the parties' dispute regarding the production of documents and responses to written discovery. Prior to Defendants' additional production on documents on August 13, 2018, Defendants produced a total of 94 pages of responsive material. Since that time, an additional 3,000 pages of material has been produced. Due to Defendants' failure to produce documents, Plaintiff was forced to continue its scheduled depositions of Steven McGee, Gregory Maguire, the 30(b)(6) representative for Defendant Neogenesis, Inc., and the 30(b)(6) representative of Defendant BioRegenerative Sciences, Inc., until those documents were produced.

Defendants refused to produce documents until a Stipulated Protective Order was entered. Plaintiff originally sent a Stipulated Protective Order to Defendants on March 12, 2018. ECF No. 24-1 p. 50. Despite several emails, Defendants did not respond until 45 days later. *Id.* pp. 73-91. After Plaintiff filed its Motion to Compel on July 3, 2018, ECF No. 24, which was subsequently denied on July 13, 2018, ECF No. 26, the parties were able to reach an agreement; on the Stipulated Protective Order, which was subsequently granted on July 26, 2018. ECF No. 28.

Since the Order was entered, Defendants have produced responsive documents to Plaintiff's discovery requests. However, prior to that time, it was not possible to schedule depositions. With discovery continuing, Plaintiff and Defendants are arranging dates to conduct

1 the above depositions. Given that the parties are not located in Nevada, the parties must coordinate  
2 schedules.

3 Furthermore, Defendants have previously filed a motion to amend their answer to add  
4 counterclaims against Plaintiff. Currently, that motion is pending. Defendants anticipate if the  
5 motion is granted that additional discovery with respect to Defendants' counterclaims will be  
6 required.

7 **D. GOOD CAUSE EXISTS TO EXTEND THE DISCOVERY DEADLINE.**

8 Local Rule 26-4 requires that any stipulation made to extend discovery made within 21  
9 days of the deadline must be supported by good cause. The good cause standard under LR 26-4 is  
10 the same as the good cause standard under Fed. R. Civ. P. 16(b)(4). Winfeld v. Wal-mart Stores,  
11 Inc., 2:14-cv-01034-MMD-CWH, 2016 WL 3360658, at \*1 (D. Nev. Jun. 9, 2016). "Good cause  
12 to extend a discovery deadline exists 'if it cannot reasonably be met despite the diligence of the  
13 part[ies] seeking extension.'" Nunez v. Harper, 2:13-CV-0392-GMN-NJK, 2014 WL 2808985, at  
14 \*2 (D. Nev. June 20, 2014) (quoting Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 609  
15 (9th Cir. 1992)).

16 A discovery dispute, which was briefed to the Court by Plaintiff, was resolved in or about  
17 July 2018. After the resolution, Defendants produced the vast majority of their documentary  
18 evidence in the case. While Plaintiff's counsel is continuing review of Defendants' supplements  
19 to their initial disclosures and their supplemental written discovery requests, it is likely that there  
20 are still responsive documents that need to be produced and reviewed before the depositions for  
21 both parties may occur. Likewise, given the costs associated with depositions of out-of-state  
22 deponents, the depositions could not reasonably and economically go forward until the parties had  
23 marshalled and produced the majority of evidence. As that has apparently now occurred,  
24 depositions can proceed. Accordingly, good cause exists to grant the extension of discovery.

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1           **E.     PROPOSED SCHEDULE FOR COMPLETING ALL REMAINING**  
2 **DISCOVERY:**

3           **1. Discovery Cut-Off**

4           The discovery cut-off shall be extended from September 3, 2018 to December 2, 2018.

5           **2. Amending the Pleadings and Adding Parties**

6           The deadline to amend the pleadings and parties has closed. No such request to amend the  
7 pleadings or add parties is requested

8           **3. Expert Disclosure**

9           The deadline to name initial experts disclosures has closed. No such request to name  
10 experts is requested.

11           **4. Dispositive Motions**

12           In accordance with Local Rule 26-1(e)(4), the last day for filing dispositive motions  
13 including, but not limited to motions for summary judgement, shall be extended from October 3,  
14 2018 to January 2, 2019.

15           **5. Pre-Trial Order**

16           In accordance with Local Rule 26-1(e)(5), the last day to file a Joint Pre-Trial Order,  
17 including any disclosures pursuant to FRCP 26(a)(3), shall be extended from November 2, 2018  
18 to January 31, 2009, 2019. In the event dispositive motions are filed, the date for filing the Joint  
19 Pre-Trial Order shall be suspended until thirty (30) days after the decision on the dispositive  
20 motions or upon further order by the Court extending the time period in which to file the Joint Pre-  
21 Trial Order.

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1                   **6. Trial and Calendar Call**

2                   No trial has been set in this matter.

3                   IT IS SO STIPULATED.

4                   DATED this 29th day of August, 2018.

                    DATED this 29th day of August, 2018.

5                   GARMAN TURNER GORDON LLP

6                   /s/ Stephen A. Davis

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Sciences, Inc. and Neogenesis

19                   **ORDER**

20                   The above Stipulation to Extend Discovery Deadlines (Second Request) is hereby  
21                   GRANTED.

22                   IT IS SO ORDERED.

23                     
24                   UNITED STATES MAGISTRATE JUDGE

25                   Dated: August 30, 2018  
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